

Case referred to:

- (i) **P. C. Cheelo and Others v Zambia Consolidated Copper Mines Limited (1999) ZR 162**

When this matter came before us on 2nd April, 2019, we allowed the appeal. We then went on to dismiss the proceedings in the High Court on the ground that they were a nullity. We said then that we would give our reasons later. We now give those reasons.

The two parties are unions. The appellant is the Zambia Congress of Trade Unions (ZCTU), the mother body of the respondent which is the University of Zambia Lecturers and Researchers Union (UNZALARU). The very brief facts that gave rise to the dispute between the parties are these:

The ZCTU had set the 13th January, 2012 as the date for holding its General Council meeting. The UNZALARU commenced proceedings in the High Court, seeking to stop the General Council meeting from being held on two grounds, namely;

- (i) that, being a member of the ZCTU, it was entitled to receive a provisional agenda, which the ZCTU had failed to provide, and;

- (ii) that the ZCTU had failed to provide the UNZALARU with documentation relating to the meeting, especially that one of the issues that was to be deliberated upon at the meeting concerned the UNZALARU.

Quite early in the proceedings, the UNZALARU entered judgment in default of appearance against the ZCTU on two occasions. The attempt by the ZCTU to set aside the default judgment on the second occasion failed, both before the Deputy Registrar and the High Court Judge at chambers. That is what led the ZCTU to appeal to this court.

At the hearing, we invited counsel for the UNZALARU to address us with regard to the provisions of **section 85** of the **Industrial and Labour Relations Act, Chapter 269** of the **Laws of Zambia** which provides that the Industrial Relations Court has original and exclusive jurisdiction to hear and determine any industrial relations matters. In particular, we invited counsel to address us on the effect that the provisions might have on his client's action in the High

Court. The only explanation that learned counsel gave for commencing proceedings in the High Court was that his client was seeking a declaratory judgment.

Section 85(1) is couched as follows:

“The court shall have original and exclusive jurisdiction to hear and determine any industrial relation matters and any proceedings under this Act.”

The key word in that provision is the word “*exclusive*”. The word means that only the Industrial Relations Court has jurisdiction to hear and determine Industrial relations matters. We are alive to the fact that in the case of **P.C. Cheelo and Others v Zambia Consolidated Copper Mines Limited**⁽¹⁾ we held that the term ‘*industrial relation matters*’ did not have such wide interpretation so as to encompass cases of breach of contract, wrongful dismissal or even monetary claims for unpaid salaries or redundancy benefits which could be tried by a subordinate court, provided the amount did not exceed that court’s jurisdiction. For that reason, we held also that the High Court has jurisdiction to try cases arising out of pure master and servant relationships. Indeed, that should be so because,

for example, in the case of wrongful dismissal the issues to be determined fall purely under the law of contract, even though the dispute itself may have arisen in an industrial relations setting. Again, in the case of unpaid salary or redundancy benefits, the claim is purely one for a debt.

In this case, the dispute is between unions. It does not fall under the law of contract or, indeed, any law that could give rise to an award of damages. Instead, the dispute is about the internal rules and procedure governing the ZCTU. The **Industrial and Labour Relations Act** provides in **section 35** thereof the procedure to be adopted where there is a dispute between unions. In that procedure, there is a reference to "*the court*", which, in terms of that **Act**, refers to the Industrial Relations Court. So, in this case, not only was the dispute a purely industrial relations matter but the parties were obliged to subject their dispute to the procedure provided in **Section 35**; and that procedure eventually led to the Industrial Relations Court.

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Coming to the argument by learned counsel that the proceedings were commenced in the High Court because his client was seeking a declaratory judgment, we can only refer counsel to the wide array of remedies that the Industrial Relations Court can grant under **Section 85A** of the **Act**. Under that section, the court is empowered to pronounce any order or award it may deem fit; this may include a declaratory judgment.

For the foregoing reasons, the proceedings in the High Court were a nullity.

Before we conclude, we wish to point out that when this matter was commenced in 2012, the structure of our judicature was set out in **Article 91** of the **Constitution of Zambia** prior to the amendments of 2016. According to that structure, the Industrial Relations Court was a stand-alone court, separate from the High Court. Following the amendments of 2016, **Section 133** of the **Constitution of Zambia Act No. 1 of 2016** established the Industrial Relations Court as a division of the High Court. Other divisions of the High Court that were established at the same time are the Commercial Court, the Family Court and the Children's Court. In

terms of nomenclature, the Industrial Relations Court is still referred to as such; and maintains a separate registry. The **Industrial and Labour Relations Act**, on the other hand, has not been amended. The position now, therefore, is that where a matter is purely an industrial relations one, proceedings should be filed in the registry of the Industrial Relations Court; and not in the principal registry of the High Court, which is reserved for matters that do not fall under these specialized courts.

Those are the reasons why we allowed the appeal and also dismissed the proceedings in the High Court. As we pronounced at the hearing, the ZCTU is awarded costs of both the appeal and the proceedings in the High Court.

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M. C. Musonda
AG/DEPUTY CHIEF JUSTICE

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E. M. Hamaundu
SUPREME COURT JUDGE

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C. Kajimanga
SUPREME COURT JUDGE